

In re) Fair Hearing No. 20,991
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Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Economic Services establishing an overpayment of Food Stamps. The issue is whether the Department can assess an overpayment amount if the recipient is not at fault for the overpayment.

1. The petitioner was a recipient of Food Stamps from February 2006 through February 2007 (thirteen months). She was receiving workman's compensation insurance benefits at that time from the United States Postal Service, and the Department does not dispute that she reported this income in a timely manner. The Department further admits that it erroneously thought that this income was SSI benefits, which are exempt from consideration under Food Stamps.

2. The petitioner admits that she received \$1,677 in Food Stamps during this period that she has since learned, and does not dispute, she would not have been eligible for

had the Department correctly identified the source of the income she received during this period.

ORDER

The decision of the Department is affirmed.

REASONS

The petitioner does not dispute that the insurance benefits she received from February 2006 through February 2007 resulted in an overpayment of \$1,677 in Food Stamps during that period. The Department concedes that the petitioner was not at fault in reporting her income and that the overpayment is the result of the Department's error.

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." F.S.M. § 273.18(a). Even if the overpayment can be determined to have been the Department's fault, the regulations provide: "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action . . ." F.S.M. § 273.18(a)(2). The Department is required to "take action to establish a claim against any household that received an over issuance due to an . . . administrative error if . . .

[a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment" so long as not more than twelve months have elapsed between the month the over issuance occurred and the month the state agency discovered the error. F.S.M. § 273.18(b)(2)(ii). If administrative error occurred, the size of the Department's claim must equal the difference between what the household should have received and what the household was actually allotted. F.S.M. § 273.18(c)(1)(ii). If the household is continuing to receive Food Stamps, the required repayment is the greater of ten percent of the household's monthly allotment or \$10 per month when the claim is based on administrative error—twenty percent or \$10 when caused by household error. F.S.M. § 273.18(g)(4). However, it does not appear that the petitioner continues to receive Food Stamps.¹

Inasmuch as the Department's decision is in accord with the above regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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¹ At the hearing in this matter, held on August 20, 2007, the Department discussed other repayment options and liabilities with the petitioner.